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THE LEGAL SETTING OF PLATO'S APOLOGY

By ROBERT J. BONNER

The appearance in 1893 of an edition of the *Apology* of Plato with an elaborate introduction by Schanz aroused new interest in the various questions connected with the trial of Socrates. But apart from the problems involved in the indictment and the alternative penalty proposed by the defendant, the strictly legal side of the *Apology* has nowhere received adequate treatment.¹ The purpose of this paper is to develop the legal setting of the defense and compare it from this standpoint with contemporary forensic speeches. It is immaterial whether the *Apology* is purely fictitious or is in part based on truth—"stilizirte Wahrheit," as Gomperz² neatly expresses it. In the *Apology* attributed to Xenophon we have, I believe, the nearest approach to an exact report of the real speech.³

The Platonic defense of Socrates consists of three distinct speeches. The first is his answer to the speeches of the prosecutors and deals with the question of guilt or innocence. The second, delivered after the verdict "guilty" had been rendered, is devoted to the presentation of the alternative penalty proposed by Socrates in accordance with Athenian practice. This is of special interest as being the only speech of this kind extant. The third is an informal address to the jurors after the conclusion of the trial. Socrates had been left in the courtroom for a brief period (*Apol.* 39e) while the officials were making preparations to convey him to prison, and he employed the interval by addressing first those who had voted for conviction and then those who had voted for acquittal. Official permission was probably not neces-

¹ Menzel in his admirable monograph "Untersuchungen zum Sokrates-Processe," *Sitzungsber. d. K. Akad. d. Wiss. zu Wien* CXLV (1903), II, pp. 1 ff., has done more along this line than any previous scholar. Owing to his legal training his conclusions regarding technical matters cannot be lightly rejected.

² *Gr. Denk.* II, p. 81. The view that it is practically a verbatim report of Socrates' speech is out of the question.

³ Schanz, pp. 76 ff.; Menzel *op. cit.*, pp. 5 ff.

sary. We have, so far as I am aware, no similar proceedings in any other case, though informal addresses to the jurymen delivered by strangers at the conclusion of a case are not unknown.¹

Modern legal procedure does not provide for the separate trial of the question of guilt and the question of penalty. Where the jury has discretion in the matter of penalty only one verdict is rendered. If, however, the jury determines the guilt and the judge fixes the penalty, the formal judgment need not be given when the verdict is announced. Before sentence is pronounced in a capital case the defendant is given an opportunity to say why sentence shall not be passed on him forthwith, but this is a mere form and nothing that he may say has any influence even in those jurisdictions in which he is not allowed to take the stand as a witness: The only modern parallel to the remarks of Socrates after the conclusion of the trial is the address that a condemned criminal sometimes makes to those assembled to witness his execution.

Indictments and statements of claim were always read in court by the clerk as part of the preliminary proceedings.² It occasionally happened that litigants had them read again during the course of the speech or themselves repeated them verbatim or in substance as Socrates chose to do.³ The relation between the general charge of impiety in the indictment and the specific charge of corrupting the youth has given rise to much discussion. Schanz⁴ regards the corruption of the youth as an overt act of impiety rather than a separate charge. Menzel (p. 25) believes that it is impossible to prove that the corruption of the youth was a special form of impiety owing to the paucity of evidence. In his opinion offenses against public morality could be joined to a charge of impiety, as in the case of Aspasia.⁵ This view is borne out by the fact that it was not contrary to Attic practice to include in a single indictment offenses that were really distinct.

¹ Menzel *op. cit.*, p. 50; cf. Antiph. 6. 21.

² Meier-Schömann-Lipsius *Att. Process*, p. 919.

³ Dem. 45. 46; Antiph. 1, 2; 6, 16; Plato *Apol.* 24b. Earlier in his speech (19b) Socrates gives the exact wording of a fictitious indictment in accordance, as he suggests, with the rules of the court.

⁴ *Op. cit.*, p. 12; cf. *Att. Process*, pp. 367 ff.

⁵ Plut. *Pericles* 32.

It has not escaped notice that Socrates carefully avoids δ *ἄνδρες δικασταί* in favor of δ *ἄνδρες Ἀθηναῖοι* or δ *ἄνδρες*. It is only in his speech to those who had voted for his acquittal that he employs the regular form of address, adding (40 a) by way of explanation that they may rightly be called *δικασταί*: *ὕμᾱς γὰρ δικαστὰς καλῶν ὀρθῶς ἂν καλοῖην*. This remark has given rise to the view that Socrates avoided calling the jurymen *δικασταί* because, owing to their prejudice, they did not deserve the name. But Socrates could not have known in advance that the jurymen would prove unworthy of their name; for Xenophon has said expressly (*Mem.* iv. 4. 4) that he could easily have secured an acquittal had he been willing to adopt the usual method of persuasion. And the smallness of the majority against him¹ supports Xenophon's view. Moreover, on several occasions, in reminding them of their duty to consider only the justice of his pleas, he virtually calls them jurymen.²

Schanz (p. 75) holds that Plato is himself responsible for this feature of the defense. His intention was to indicate in advance his opinion of the verdict. But this theory will not bear close scrutiny. Doubtless the official title of the jurymen was *δικασταί* and it was customary to address them as δ *ἄνδρες δικασταί*. But in extant speeches there is the greatest possible diversity. Isocrates in some speeches refrained entirely from using any form of address. In Andocides' defense against a charge of impiety, preferred in the same year as Socrates' trial, the official title occurs but once; elsewhere with a single exception we find δ *ἄνδρες*.³ We also find Andocides, Aeschines, and Deinarchus employing δ *Ἀθηναῖοι* in addressing the dicasts; nor is this strange, since no hard and fast line was drawn between deliberative and judicial bodies in Athens.⁴ The assembly occasionally exercised judicial functions and the jury was but a convenient committee of the assembly and might be addressed as δ *Ἀθηναῖοι* quite as properly as the *ἐκκλησιασταί*. Under these circumstances it is hard to

¹ But 281 out of 501 voted for his conviction: Plato *Apol.* 36 A; Diog. Laert. ii. 41.

² αὐτὸ δὲ τοῦτο σκοπεῖν καὶ τοῦτῃ τὸν νοῦν προσέχειν, εἰ δίκαια λέγω ἢ μή. δικαστοὺ μὲν γὰρ αὕτη ἀρετὴ (18 a); cf. 35 c.

³ And. *Myst.* 136, 137.

⁴ Lipsius *Att. Recht*, p. 176.

believe that even the most critical of Socrates' hearers or of Plato's Athenian readers would attach any importance to the absence of the official title. The use of the official title in addressing part of the jury after the trial (40 *a*) is on a different basis. Those who voted for acquittal are contrasted, not with the whole jury of which they formed so considerable a part, but with those who voted for conviction. The latter alone are prejudiced and unworthy of the name. A subsequent passage shows that he has the adverse jurymen only in mind: *εἰ γὰρ τις ἀφικόμενος εἰς Ἄιδου, ἀπαλλαγεῖς τούτων τῶν φασκόντων δικαστῶν εἶναι, εὐρήσει τοὺς ἀληθῶς δικαστάς.*¹

Manifestly these pretended jurymen are those who voted for conviction and not the whole jury including those whom he had just called *δικασταί*.

It is commonly² stated that there is but slight provision for the introduction of evidence in the *Apology*. But the lack of evidence is apparent rather than real. As a matter of fact all of Socrates' assertions are corroborated. It is true that no documentary, and but little testimonial, evidence is provided; but full use is made of other equally effective means of corroboration. On two occasions (20 *e*, 32 *d*) testimonial evidence is promised, though we are nowhere told that it was actually produced. Menzel, (p. 6), however, finds in Xenophon's *Apol.* 22³ an indication that Socrates did produce witnesses. Owing to the fact that the practice of reducing testimony to writing was not yet in vogue, it is easy to see how witnesses might properly give their evidence at the end of the address in the form of a more or less elaborate statement. Thus the distinction between a corroborative witness and an advocate (*συνήγορος*) might practically disappear. The absence from the text of the customary indication of the introduction of evidence, though unusual, is not without parallel in the

¹ *Apol.* 40 *e*. In Xenophon's *Apology* Socrates uses *ὦ ἄνδρες*, and if the addition of *Ἀθηναῖοι* by Plato has any significance, it may be that he wishes his readers to feel that the justification of Socrates' career is addressed to the entire body of citizens; and this would be particularly fitting in view of the fact that to the general prejudice the unfavorable verdict was almost entirely due (*Apol.* 23 *e*; 28 *a*).

² Poehlmann *Sitzungsber. d. K. Akad. d. Wiss. zu München*, 1906, p. 97; Gomperz *op. cit.* II, p. 81; Schanz, p. 75.

³ *ἐρρήθη μὲν δῆλον ὅτι τούτων πλείω ὑπὸ τε αὐτοῦ καὶ τῶν συναγορευόντων φίλων αὐτοῦ.*

extant speeches.¹ Gomperz's explanation (p. 81) that Plato was anxious to avoid the appearance of conforming strictly to the regular practice in matters of detail is borne out by other considerations, as will appear.² Now, apart from these two cases involving the content of the oracle given to Chaerephon and the incident regarding Leon of Salamis, there were surprisingly few matters of fact involved in the case. Early in his speech (19 *d*) Socrates adverts to the assertions of his detractors that he had engaged in physical speculations, and in denying this charge he relies entirely upon the personal knowledge of the jury for corroboration. He asks those of the jurors who had listened to his conversations from time to time to inform the others that he had never used such language as that attributed to him in the *Clouds* of Aristophanes. This means of corroboration was frequently resorted to in the Athenian courts, and according to the Orators a litigant could have no better witnesses than the men who sat on the jury.³ On more than one occasion⁴ Socrates denies that he taught for pay. Obviously he could not prove this in any practicable way, nor did he need to do so. The onus probandi was clearly on the other side and the fact (19 *c*) that they had not produced a single witness to prove that he ever solicited, or accepted, pay is ample corroboration of his denial. So also his assertion (33 *a*) that he never taught anyone privately required no support in the absence of evidence to the contrary.

In regard to the charge that he had corrupted the youth, he does not rest content with drawing attention to the failure of the prosecution to produce any of those he was alleged to have corrupted or any of their relatives, but he challenges his accusers (33 *d ff.*) to take part of his time to introduce such evidence if they had overlooked it. This challenge is less formal than those which appear in Demosthenes, but it has its counterpart in the

¹ Blass *Att. Bered.* III. i, p. 132.

² It may be objected that all evidence was required to be in writing. But Andocides (*Myst.* 14), who was tried for impiety in the same year as Socrates, examined one of his witnesses in court, and in *Wasps* 956 ff., in the mock trial of a dog for stealing a cheese, the cheese-scraper was produced as a witness and questioned in court. For a full statement of the arguments in favor of this view, see the writer's *Evidence in Athenian Courts* (1904), pp. 46 ff.; cf. Thalheim *Berl. phil. Woch.* XXV, p. 1575.

³ Dem. 21. 18; 34. 50; 44. 66; Ant. 6. 25.

⁴ *Apol.* 19 *d*; 31 *c*; 33 *a*.

numerous oral challenges in Antiphon and Andocides.¹ In the Orators (cf. Demos. 45, 59–61) considerable stress is laid upon the evidentiary value of challenges.

But there were some incidents in the career of Socrates that were so well known that it was superfluous to refer even to the personal knowledge of the jury for corroboration. For example, no one would call in question his distinguished military services at Potidaea, Amphipolis, and Delium, or his refusal to permit the assembly to proceed improperly with the case against the generals in command at Arginusae (28 *e*, 32 *b*). And it is worth while to note that Plato was careful to distinguish such incidents from the refusal of Socrates to arrest Leon (32 *c* ff.). This latter was not a public refusal and obviously required proof.

In this connection it must not be forgotten that Socrates would gladly have produced a number of other witnesses had he known their names.² Who can doubt that under his skilful questioning the slanderers who were responsible for the general prejudice against him would have proved excellent witnesses in his favor? Socrates' reference to these unknown slanderers has been entirely misunderstood. The fact that he virtually calls them *κατήγοροι* has created the impression that somehow or other he contemplated their being parties to the suit; but a later passage shows that he really regarded them as witnesses: *εἰ γὰρ δὴ ἔγωγε τῶν νέων, τοὺς μὲν διαφθείρω . . . χρῆν δήπου . . . νυνὶ αὐτοὺς ἀναβαίνοντας ἐμοῦ κατηγορεῖν καὶ τιμωρεῖσθαι.*—33 *d*.

καὶ (ἄλλους) πολλοὺς ἐγὼ ἔχω ὑμῖν εἰπεῖν, ὧν τινα ἐχρῆν μάλιστα μὲν ἐν τῷ ἑαυτοῦ λόγῳ παρασχέσθαι Μέλητον μάρτυρα.—34 *a*. So long as oral evidence was allowed, the confusion between an adverse witness and an accuser was as natural as the confusion between a favorable witness and an advocate suggested above.

It thus appears that Plato has been by no means remiss in procuring corroboration for statements of fact wherever it was

¹ i. 6; vi. 24; *Myst.* 23, 26, 35, 55. Schanz adds some instances from other Orators without noticing the evidentiary value of these challenges.

² He admits that he knew the name of one, Aristophanes the comedian, but his accusations were so ridiculous that Socrates needed only to refer to the jurymen as witnesses that his teachings bore no resemblance whatever to those of the Aristophanic Socrates.

required. Would Lysias have done more had he written a speech for Socrates, as he is alleged to have done?¹ Fortunately we are not entirely without means for attempting an answer to this question. The case of the cripple for whom Lysias wrote a speech to be used at a *δοκιμασία* before the senate is from the lawyer's standpoint strikingly similar to that of Socrates in many ways.² The cripple was a well-known character about the town. He, too, had been accused of disseminating evil influences among those who congregated in his shop. He doubtless was a privileged person, but his sharp tongue had made him the object of *φθόρος* and all his actions were misrepresented.³ In the presentation of the cases of these two men there are some striking similarities. No defendant in the extant speeches ever dared to flout the jury as did the cripple;⁴ nor is the tone of his speech paralleled anywhere except in the Platonic *Apology*.⁵ In the matter of evidentiary apparatus Lysias' treatment of his case is quite inferior to that of Plato. He relies entirely on the personal knowledge of the jury and the evidence of their eyesight (xxiv. 14). Plato, on the other hand, not only uses testimonial evidence, challenges, and the knowledge of the jury, but presents the most notable example of effective interrogation of an opponent in court. The reluctance to answer damaging questions and the eager haste to reply when the question seems favorable are admirably brought out; and intervention by the jury to compel a litigant to answer his opponent's question is illustrated nowhere else in Athenian legal literature.⁶ The whole incident is much more dramatic and effective than Lysias' mechanical interrogation of Eratosthenes, and the corn-dealers.⁷ And so one may well doubt whether Lysias' proposed defense of Socrates was superior in the matter of evidence to the

¹ Cicero *De orat.* i. 54 repeats the story that Lysias offered Socrates a speech composed in his best style; cf. Diog. Laert. ii. 40.

² Lys. xxiv. In other cases of *δοκιμασία* Lysias made as free use of witnesses as in cases before the regular courts; cf. *orat.* xvi.

³ Cf. *Apol.* 18 d, 28 a with Lys. xxiv. 1, 3 and *Apol.* 33 d ff. with Lys. xxiv. 18-20.

⁴ Lys. xxiv. 20; cf. *Apol.* 30 e, 36 c.

⁵ *Apol.* 31 d, cf. Lys. xxiv. 18; *Apol.* 36 d, cf. Lys. xxiv. 13.

⁶ *Apol.* 27 e, cf. 25 d; Dem. lvi. 10.

⁷ Lys. xii. 26; xxii. 5.

Apology of Plato, even if it smacked more of the lawyer than of the philosopher, as Diogenes supposed.¹

In this connection it may be noted that Plato's use of technical language conforms sufficiently to the usage of the lawyers to be easily understood. But by using *ἔγκλημα*, *ἀντωμοσία*, and *ἀντιγραφή* indifferently for indictment he gives the impression that he is not more discriminating in his use of legal terminology than a layman like Socrates might be expected to be. For *ἀντιγραφή* properly means the defendant's written rejoinder, and Hyperides² furnishes the only example in the *Orators* of its use for indictment or sworn statement of claim. Plato's whole aim is to avoid technicalities where possible so as to present an effective picture of Socrates *λεγόμενον τοῖς ἐπιτυχούσιν ὀνόμασιν* (17 c). But in spite of the alleged extempore character of the speech, stereotyped topics and appeals are not altogether lacking, though they are introduced in such a way as to give the impression of naturalness. Such are: the statement that he now appears in the court for the first time, the promise to tell the "whole truth and nothing but the truth," the reference to the jurors' oath and the requests for a quiet hearing.³ So, too, the skilful way in which he seeks (20 e ff.) to establish the credibility of Chaerephon, the recipient of the oracle from Delphi, by dilating upon his pronounced democratic opinions which forced him to go into banishment during the rule of the Thirty, is in line with the common practice of the speech-writers in seeking to gain sympathy for a client or confidence in a witness by drawing attention to his unswerving support of the democratic constitution.

The customary reference to services rendered to the state by the defendant seems at first sight to be lacking, if we except his reminding the jury (30 e) that his condemnation will be their irreparable loss. But we have here simply another instance of his resigning the form and gaining the substance. For nothing

¹ Diog. Laert. ii. 40. *δηλαδὲ γὰρ ἦν (ὁ λόγος) τὸ πλέον δικανικὸς ἢ ἐμφιλόσοφος.*

² Eux. 31; cf. *Att. Process*, p. 831.

³ The appeals for silence are unusually frequent. This is due to the fact that Socrates was continually interrupted in his speech and Plato is attempting to reproduce this feature of the real trial by scattering these appeals throughout the speech; Xen. *Apol.* 14, 15; Plato, *Apol.* 17 d, 20 e, 21 a, 26 b, 27 b, 30 c.

in the way of appeal could be more effectual than the seemingly casual, but really subtle, references to his military services, particularly at Potidaea and Delium.¹

Throughout the whole speech Plato has chosen to introduce his evidentiary matter and to make his appeals in an unobtrusive manner. For careful adherence to the technical practice of the speech-writers would have been entirely out of keeping with Socrates' apology (17 *b*) for departing from the style of speaking regularly heard in court.

Considerable ingenuity has been exercised in reconciling Socrates' first suggestion of a mina as an alternative penalty with his final suggestion that thirty minae would be a suitable penalty. As this is the only extant speech dealing with counter penalties,² it is impossible to find parallels for withdrawing a suggested penalty and substituting another. One cannot but feel, however, that there was nothing in Athenian practice to prevent such a proceeding.

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¹ *Apol.* 28 *e*; cf. *Sympos.* 219 *e*, 221 *a*; *Laches* 181 *b*.

² Geisler (*Blätter f. Gymn. Schulw.* XLII, p. 38 ff.) cites the recent literature on the subject. He proposes to strike out the latter part of sec. 38 *a*. His reasons are not based upon legal considerations.